

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MATTHEW KERSHNER

§

VS.

§

CIVIL ACTION NO. 1:09-CV-408

BRAD LIVINGSTON, ET AL.

§

MEMORANDUM ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Matthew Kershner, a prisoner previously confined at the Larry Gist State Jail, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Brad Livingston and Reginald Goings.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting defendants' motion to dismiss the claims for injunctive and declaratory relief, and denying the motion to dismiss the claims for compensatory and punitive damages.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and the pleadings. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Defendants' motion to dismiss for failure to state a claim is **GRANTED** with respect to the claims for declaratory and injunctive relief. The motion is **DENIED** with respect to the claims for compensatory and punitive damages.

**SIGNED** this the **15** day of **September, 2010**.

A handwritten signature in black ink, appearing to read 'Thad Heartfield', is written over a horizontal line.

Thad Heartfield  
United States District Judge